

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DAVID W. PENNINGTON, NANCY J. THORNER, PAUL M. TAIT, and JAMES P. ECONOMOS, individually and on behalf of all others similarly situated,

Plaintiffs,

$$\mathbf{V}_i$$

ZIONSOLUTIONS LLC and THE BANK OF  
NEW YORK MELLON,

Defendants.

No. 11-cv-04754

Hon. Joan H. Lefkow

**DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) OR,  
IN THE ALTERNATIVE, TO STRIKE PURSUANT TO FED. R. CIV. P. 12(f)**

Defendants Zion*Solutions* LLC and The Bank of New York Mellon (“BNY Mellon”), by their attorneys, respectfully move this Court for an order dismissing Plaintiffs’ claims. Alternatively, if the Court does not dismiss the complaint in its entirety, Defendants request an order striking certain material from the complaint as impertinent, immaterial, and/or scandalous. In support of their motion, Defendants state as follows:

1. *ZionSolutions* owns Zion Station, a non-operating nuclear power plant in Zion, Illinois, and holds two commercial reactor licenses issued by the U.S. Nuclear Regulatory Commission (“NRC”). *ZionSolutions* is responsible for the decommissioning of Zion Station (*i.e.*, dismantling the facility and remediating the site). The decommissioning process is funded by monies held in trusts established by *ZionSolutions* for the purpose of decommissioning Zion Station (the “Zion Trusts”). BNY Mellon is the trustee for the Zion Trusts.

2. In this lawsuit, Plaintiffs allege that *ZionSolutions* is using Zion Trust assets improperly and that BNY Mellon is administering the Zion Trusts improperly. Plaintiffs seek an

injunction requiring *ZionSolutions* to return trust payments and barring further payments to *ZionSolutions* from the Zion Trusts; the appointment of a new trustee; the immediate return of trust assets to ComEd customers; and an accounting.

3. The complaint should be dismissed for several reasons. First, the Illinois law upon which all of Plaintiffs' claims for relief are based, a provision of the Illinois Public Utilities Act ("IPUA"), does not apply because *ZionSolutions* is not a public utility (although *ZionSolutions* and the Zion Trusts remain subject to robust federal regulation). Second, even if the IPUA were applicable, Plaintiffs have no statutory or common law private right to enforce it. Third, Plaintiffs' request for refunds from Zion Trust assets is premature under federal law and therefore not ripe. Fourth, even if these deficiencies are not sufficient to dismiss the complaint, Plaintiffs vague and conclusory allegations do not state a plausible claim for relief and the complaint should be dismissed for this reason as well.

4. Alternatively, if the Court does not dismiss the claim in its entirety, it should strike certain allegations that are impertinent, immaterial, and/or scandalous. In particular, Plaintiffs' allegations about the supposed reasons why Commonwealth Edison Company ceased operating Zion Station as an active nuclear power plant in 1998, and why Exelon Generation Company did not re-start the plant when it owned it from 2001-2010, have nothing to do with Plaintiffs' claims or with the relief they seek. For these reasons, allegations about these matters should be stricken.

WHEREFORE, for these reasons and as discussed in detail in Defendants' supporting memorandum, the complaint should be dismissed with prejudice or, in the alternative, certain allegations should be stricken.

Respectfully Submitted,

Dated: September 13, 2011

ZIONSOLUTIONS LLC and  
THE BANK OF NEW YORK MELLON

By: /s/ Scott T. Schutte  
One of their attorneys

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*Attorneys for Defendants ZionSolutions LLC  
and The Bank of New York Mellon*

**CERTIFICATE OF SERVICE**

I, Scott T. Schutte, an attorney, hereby certify that I filed the foregoing document electronically through the Court's ECF filing system, which will cause a true and correct copy to be served via e-mail on all ECF-registered counsel of record, this 13th day of September 2011.

/s/ Scott T. Schutte

Scott T. Schutte